COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING AND MARKETS

Records

95-91-C96

July 24, 1995

Re: Request for No-Action Relief from CTA Registration Where CTA Has Only Foreign Investment Funds as Clients

Dear :

This is in response to your letter dated July 7, 1995, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), in which you request on behalf of ("X") that the Division not recommend that the Commission take any enforcement action against "X" for failure to register as a commodity trading advisor ("CTA") in connection with "X's" providing commodity interest trading advice to (the "Fund").

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Fund is organized and operated pursuant to the laws of the Cayman Islands. Shares in the Fund may not be owned directly or indirectly by United States persons.[1/] Accordingly, you represent that the Fund does not, and will not, contain any capital directly or indirectly contributed from United States sources. Further, you represent that all meetings and activities of the Fund's shareholders and officers will be conducted outside of the United States.

"X" is registered as an investment adviser ("IA") under the Investment Advisers Act of 1940. In addition to acting as an IA to a number of investment companies registered as such under the Investment Company Act of 1940 ("ICA"), "X" intends to provide commodity interest trading advice as well as securities advice to the Fund. "X" is primarily engaged in providing investment advice to registered investment companies and, with respect to the Fund, will provide commodity interest trading advice in a manner solely

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1/ You have represented that for the purpose of this request, the definition of "United States person" is identical to the definition employed in Division of Trading and Markets Interpretative Letter No. 92-3, [1990-92 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,221 (January 29, 1992).

incidental to its business of providing securities advice to the Fund. Because of its foreign nature the Fund will not (and absent an exemption from the Securities and Exchange Commission, cannot) register as an investment company under the ICA. Thus, the Fund is not a qualifying entity under Rule 4.5(a) and an exemption from CTA registration pursuant to Rule 4.14(a)(8) is unavailable to "X" with respect to the commodity interest trading advice it intends to render to the Fund. As you note by letter dated February 14, 1994, the Division issued relief from CTA registration to "X" in connection with its providing commodity interest trading advice to the foreign funds identified therein based upon representations substantially similar to those you have made in support of the instant request.

Based upon the foregoing representations and consistent with our prior practice in this area, the Division will not recommend that the Commission take any enforcement action against "X" for failure to register as a CTA in connection with its providing commodity trading interest advice to the Fund. This position is subject to the conditions that: (1) "X" does not otherwise act or hold itself out as a CTA; (2) the Fund will be operated pursuant to the criteria of Rule 4.5(c)(2); and (3) "X" will submit to such special calls as the Division may make of it to demonstrate compliance with the terms and condition of this "no-action" position.[2/]

The relief issued by this letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act")[3/] or the Commission's regulations thereunder. For example, it remains subject to the antifraud provisions of Section 4o of the Act,[4/] to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other provisions of Part 4, including the operational and advertising requirements of Rules 4.30 and 4.41, respectively, which apply to each person who comes within the CTA definition, regardless of registration status. Further, this relief is applicable solely in connection with "X" providing commodity interest trading advice to the Fund.

The no-action position taken in this letter is based on the representations you have made to us and is subject to compliance with the conditions stated above. Any different, changed or

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2/ These conditions were also stated in our February 14, 1994 letter.

3/ 7 U.S.C. § 1 et seq. (1994).

4/ 7 U.S.C. § 6o (1994).

omitted facts or conditions might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the operations of the Fund, including its shareholder composition and trading activities, change in any way from those as represented to us. Finally, this letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission.

If you have any questions regarding this letter, please contact me or Myra Silberstein, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel